IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25683 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SWAMINARAYAN SANSKAR DEEP TRUST - Petitioner(s)
Versus
JOINT ADMISSION COMMITTEE FOR PROFESSIONAL COURSE & 4 - Respondent(s)

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Appearance :
MR HJ NANAVATI for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 5.
MR AD OZA WITH MR DIPAK R DAVE for Respondent(s) : 2,
MS ARCHNA RAWAL, AGP for Respondent(s) : 4,
MRS VD NANAVATI for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 29/01/2007
ORAL JUDGMENT

1. Heard the learned advocates for the respective parties. In light of the view that the Court is inclined to take the matter is taken up for final hearing and disposal. Rule. The learned advocates appearing for respective respondents are directed to waive service.

2. The petitioner is running a Pharmacy College through Swaminarayan Sanskar Deep Trust. For academic year 2006-2007, the petitioner was entitled to admit students to 25% seats of the total in take capacity, which in terms of number would be 15. It is the case of the petitioner that after having issued advertisement on 12.07.2006 in daily Gujarati News-paper "*Sandesh*", in Ahmedabad, Rajkot, Baroda and Surat editions, the petitioner received 25 applications from students desirous to obtain admissions in the management quota. It is the say of the petitioner that the admission process was completed on 15.07.2006, and thereafter, the letter dated 15.07.2006 was received by the petitioner on 24.07.2006 from respondent No.2-Committee. It was stated in the said letter that various complaints had been received against the

petitioner regarding non-issuance of application forms, demanding additional fees/ donations etc. According to petitioner, a reply was tendered on 25.07.2006 giving detailed explanation. Thereupon vide letter dated 10.08.2006, respondent No.1-Committee called upon the petitioner to submit details latest by 17.08.2006 in the format as detailed in earlier letter dated 31.05.2006. According to the petitioner such details were submitted.

3. According to the petitioner subsequently the petitioner was directed by respondent No.2-Committee to include names of 12 students in the admission list. However, the petitioner informed that as the admission process was already over and the list of admitted students had been finalized and forwarded to the Committee, there was no question of entertaining such applications. This was communicated to the Committee on 31.08.2006. Subsequently, on 29.09.2006 respondent-Committee summoned the petitioner to appear on 03.10.2006. Accordingly, as per say of the petitioner, the Managing Trustee gave a written communication to respondent No.2-Committee on 03.10.2006 after the discussions between the two parties were over. In the said communication it was

submitted on behalf of the petitioner that in relation to admitting various students as per oral direction, respondent No.2-Committee may issue the said directions in writing. The grievance of the petitioner is that thereafter there was no communication from the respondents and all of a sudden on 04.11.2006 respondent No.1-Committee sent a communication cancelling all the admissions.

4. Having heard the learned advocates for the respective parties it is apparent that the impugned communication dated 04.11.2006 has been issued by respondent No.1 at the behest of respondent No.2-Committee. The grievance made on behalf of the petitioner is that no opportunity of hearing was ever granted to the petitioner for cancelling the admission of all the students admitted in 25% management quota seats.

5. That even the communication dated 04.11.2006 does not contain any reasons except for stating that the Institute has failed to follow the admission procedures prescribed by the Committee for admitting the students on such seats.

6. Respondent No.2-Committee has tendered affidavit-in-reply dated 24.01.2007 and has sought to justify impugned communication by giving various reasons in the affidavit-in-reply, but admittedly, no reasons are forthcoming in the impugned communication dated 04.11.2006. It is also admitted fact that before cancelling admission of all the students in the entirety, no opportunity of hearing was granted nor was any basis for taking such a drastic action communicated. Even if, for the sake of argument, it could be stated that when the communication records that the stipulated procedures had not been followed by the petitioner reasons are given, it is necessary to take note of the fact that except for this vague statement, there is nothing in the communication to denote as to which procedure has not been followed and at what stage. In relation to so called complaints stated to have been made by students an explanation has been tendered by the petitioner and thereafter, there is nothing on record to show as to why the said explanation is not acceptable, in fact there is nothing on record to show as to whether the said explanation is acceptable or not; and if not acceptable, the reasons therefor.

7. In the aforesaid factual matrix, it is not possible to sustain the cancellation of admission granted to all the students. The communication dated 04.11.2006 cannot be permitted to operate and is quashed and set aside.

8. Apart from the aforesaid fact situation, the impugned order / communication cannot be sustained for additional reason that the affected students, who have no role to play in the admission process, have been made the ultimate victims without even being granted an opportunity of hearing. Therefore, even on this count, the impugned communication dated 04.11.2006 is required to be quashed and set aside.

9. Before parting, it is necessary to take note of the fact that in the list of 15 students admitted under the 25% management quota seats, name of one Patel Dhara Hasmukhbhai appears at Sr.No.15 (Annexure R5 Page No.88) which has been scored out with a remark mentioning “Not eligible”. The reason for scoring out the said name appears to be that the said student does not figure in the merit list prepared by respondent No.1-Committee. The learned advocate appearing on behalf of the petitioner has stated,

under instructions, that the said student is admittedly not eligible. In the aforesaid fact situation, the action of the respondent-Committee is upheld to the aforesaid extent only, namely cancellation of admission of the said student Patel Dhara Hasmukhbhai, subject to the observations made in Special Civil Application No.25908 of 2006 which has been filed by the guardian of the said student.

10. The petition is allowed accordingly to the aforesaid extent. Rule made absolute. There shall be no order as to costs.

(D.A.MEHTA, J.)

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